86-195
No. -

FILED
AUG 7 1986
JOSEPH F. SPANIOL, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ARKON SHIPPING AGENCY, INC.,
KONKAR SHIPPING AGENCIES, S.A.,
AND KONKAR RESOLUTE CORPORATION
Petitioners

v.

AMALIA KASSAPAS, individually and as personal representative of the estate of Georgios Kassapas, and as trutrix of the estates of the minor children, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, individually and as personal representative of the estate of Andreas Lambou; VASILIKI LAMBOU; SOFIA LAMBOU; and VASILIKI LAMBOU

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

GERARD T. GELPI
Counsel of Record
ROBERT P. MCCLESKEY, JR.
GELPI, SULLIVAN, CARROLL & LABORDE
430 Notre Dame Street
New Orleans, Louisiana 70130
(504) 524-9714

Counsel for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTION PRESENTED

I. Must the general maritime law, as fashioned by Congress and the federal courts, be applied by a state court hearing a maritime claim pursuant to the "savings to suitors" clause found in 28 USC §1333? If so, can a Louisiana state court refuse to apply an essential feature of the general maritime law—the doctrine of *forum non conveniens*—and thereby destroy uniformity and create conflict between state and federal courts hearing identical maritime claims?

LIST OF PARTIES

The parties involved in the instant matter are as set out in the caption. The corporate petitioners have no parent, subsidiary or affiliated companies.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
JURISDICTION	2
STATUTE INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR ALLOWANCE OF THE WRIT	9
CONCLUSION	14
APPENDIX	1a

TABLE OF AUTHORITIES

CASES: Page

Amalia Kassapas v. Arkon Shipping Agency, Inc., No. 82-6954 (S.D.N.Y.); No. 84-7196 (2nd Cir. 1984) 5

Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd., 369 U.S. 355, 82 S.Ct. 780, 7 L.Ed.2d 798 (1962) 9

Azzopardi v. Ocean Drilling & Exploration Co., 742 F.2d 890 (5th Cir. 1984) 11

The BELGENLAND, 114 U.S. 355, 5 S.Ct. 860, 29 L.Ed. 152 (1885) 10

Chelentis v. Luckenback S.S. Co., 247 U.S. 372, 38 S.Ct. 501, 71 L.Ed. 1171 (1918) 10

Fisher v. Agios Nicolaos V, 628 F.2d 308 (5th Cir. 1980), *cert. denied, sub nom, Valmas Brothers Shipping, S.A. v. Fisher*, 454 U.S. 816, 102 S.Ct. 92, 70 L.Ed.2d 84 (1981) 11

Garrett v. Moore-McCormack Co., 317 U.S. 239, 63 S.Ct. 246, 87 L.Ed. 238 (1942) 10, 13

Gercey v. United States, 409 F.Supp. 946 (D.R.I.), *aff'ed*, 540 F.2d 536 (1st Cir. 1976), *cert. denied*, 430 U.S. 954, 97 S.Ct. 1599, 51 L.Ed.2d 804 (1977) 13

Gulf Oil Corporation v. Gilbert, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947) 11, 12, 14, 15

Hellenic Lines, Ltd. v. Rhoditis, 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970) ... 11, 12, 14

Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 79 S.Ct. 406, 3 L.Ed.2d 550 (1959) 13

Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 40 S.Ct. 438, 64 L.Ed. 834 (1920) 10, 12

Laurizten v. Larsen, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953) 11, 12, 14

Table of Authorities Continued

	Page
Offshore Logistics, Inc. v. Tallentire, 54 U.S.L.W. 4745 (U.S. June 23, 1986), *rev'd*, 754 F.2d 1274 (5th Cir. 1985)	9
Perusahaan Umum Listrik Negara Pusat v. M/V TEL AVIV, 711 F.2d 1231 (5th Cir. 1983)	10
Pope and Talbot, Inc. v. Hawn, 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed. 143 (1953)	9, 13
Powell v. Offshore Navigation, Inc., 644 F.2d 1063 (5th Cir.), *cert. denied*, 454 U.S. 972, 102 S.Ct. 521, 78 L.Ed.2d 391 (1981)	13
Southern Pacific Co. v. Jensen, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917)	10, 14
St. Hilaire Moye v. Henderson, 496 F.2d 973 (8th Cir.), *cert. denied*, 419 U.S. 884, 95 S.Ct. 151, 42 L.Ed.2d 125 (1974)	13
STATUTES:	
28 U.S.C. § 1257(3)	2
28 U.S.C. § 1333	i, 9
28 U.S.C. § 1404(a)	3, 12
46 U.S.C. § 688	2, 5
La. Code Civ. P. art. 123	3, 7, 12
La. Code Civ. P. art. 3541	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ARKON SHIPPING AGENCY, INC.,
KONKAR SHIPPING AGENCIES, S.A.,
AND KONKAR RESOLUTE CORPORATION

Petitioners

v.

AMALIA KASSAPAS, individually and as personal representative of the estate of Georgios Kassapas, and as trutrix of the estates of the minor children, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, individually and as personal representative of the estate of Andreas Lambou; VASILIKI LAMBOU; SOFIA LAMBOU; and VASILIKI LAMBOU

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Petitioners respectfully seek writ of certiorari to review the judgment of the Louisiana Fifth Circuit Court of Appeal and the denial, without opinion, of petitioners' application for writ of certiorari or review to the Louisiana Supreme Court. Specifically, the

judgment of the Louisiana Fifth Circuit Court of Appeal held that the federal maritime doctrine of *forum non conveniens* is not to be applied to dismiss a Jones Act, 46 U.S.C §688, and general maritime law claim brought in Louisiana state court, as the Louisiana Code of Civil Procedure does not provide a statutory vehicle for dismissal on that basis.

OPINIONS BELOW

The order of the Supreme Court of Louisiana, denying petitioners' application for writ of certiorari or review is reported at 488 So.2d 203 (La. 1986) and is set forth in the Appendix to this Petition at 1a-2a. The judgment and opinion of the Louisiana Fifth Circuit Court of Appeal, reported at 485 So.2d 565 (La. App. 5th Cir. 1986), appears in the Appendix at 2a-7a. The judgment and reasons for judgment of the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, were not reported, but are set forth in the Appendix at 7a-13a.

JURISDICTION

The judgment of the Louisiana Fifth Circuit Court of Appeal was entered on March 10, 1986, and petitioners timely applied to the Louisiana Supreme Court for writ of certiorari or review. The order of the Supreme Court of Louisiana denying petitioners' application for writ of certiorari or review was signed and entered on May 12, 1986.

The jurisdiction of this Honorable Court is envoked pursuant to 28 U.S.C. §1257(3), in that the refusal of the Louisiana appellate courts to recognize dismissal of foreign seamen's claims on the basis of *forum non conveniens* conflicts with, and is repugnant

to, the general maritime law doctrine of *forum non conveniens* established by the federal courts.

The Louisiana Court of Appeal essentially held that Louisiana Code of Civil Procedure Article 123 provides the only procedure for addressing the issue of *forum non conveniens* in Louisiana state court. La. Code Civ. P. art. 123 does not permit dismissal on the basis of *forum non conveniens* (it virtually is identical to 28 U.S.C. §1404[a]); rather, it contemplates only transfer to another district court within the state. Like 28 U.S.C. §1404(a), the Louisiana procedural article was not enacted to deal with the peculiar problem created by foreign maritime claimants seeking the benefit of our laws, and thus, it is the jurisprudentially created federal maritime doctrine of *forum non conveniens* which must be applied by both federal and state courts in maritime matters.

STATUTE INVOLVED

a. La. Code Civ. P. art. 123 provides as follows:

> For the convenience of the parties and the witnesses, in the interest of justice, a district court upon contradictory motion, or upon the court's own motion after contradictory hearing, may transfer a civil case to another district court where it might have been brought, provided, however, that no suit brought in the parish of which the plaintiff is domiciled, and which court is otherwise a court of competent jurisdiction and proper venue, shall be transferred to any other court pursuant to this article.

STATEMENT OF THE CASE

This litigation involves claims for the wrongful death of two Greek seamen serving aboard a Greek flag vessel, the M/V KONKAR RESOLUTE, which occurred while the vessel was in the Port of Leningrad, Russia.

Decedents were, and all plaintiffs are, citizens and residents of Greece.

The M/V KONKAR RESOLUTE is a Greek flag vessel owned by Konkar Resolute Corporation (KRC). KRC owns no vessels other than the M/V KONKAR RESOLUTE. KRC is a Liberian corporation which maintains its principal place of business in Greece. KRC maintains no offices within the United States, and all of its shareholders, officers and directors are Greek citizens who reside in Greece or Saudi Arabia. None of the shareholders, officers or directors of KRC are citizens or residents of the United States.

The M/V KONKAR RESOLUTE is managed by Konkar Shipping Agencies, S.A. (KSA). KSA is a Panamanian corporation which maintains its principal place of business in Greece. KSA maintains no offices within the United States, and all of its shareholders, officers and directors are Greek citizens who reside in Greece or Saudi Arabia. None of the shareholders, officers or directors of KSA are citizens or residents of the United States.

Arkon Shipping Agency, Inc. (ASA) is KSA's New York limited agent. ASA provided occasional bunkering arrangements for the M/V KONKAR RESOLUTE and assisted in certain charter negotiations; however, ASA had no authority to conclude such charters without specific approval of the vessel owner.

ASA is a New York corporation which maintains its principal place of business in New York. ASA had no ownership interest in, nor operational or managerial control over, the M/V KONKAR RESOLUTE or her crew.

Initially, plaintiffs filed suit in the U.S. District Court for the Southern District of New York, asserting claims under the Jones Act, 46 U.S.C. §688, and the general maritime law of the United States. After extensive discovery, defendants filed a motion to dismiss on the basis of *forum non conveniens*. Following the guidelines set forth by this Honorable Court and the lower federal courts, it was determined that the laws of the United States were not applicable to plaintiffs' claims and that the litigation should be dismissed on the basis of *forum non conveniens*. *Amalia Kassapas v. Arkon Shipping Agency, Inc.*, No. 82-6954 (S.D.N.Y 1984); Appendix, at 14a. That dismissal was upheld in an unreported decision of the United States Court of Appeals for the Second Circuit. *Amalia Kassapas v. Arkon Shipping Agency, Inc.*, No. 84-7196 (2nd Cir. 1984); Appendix, at 19a.

After dismissal, but while appeal in the New York litigation was pending, plaintiffs reasserted identical Jones Act and general maritime law claims in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana. Plaintiffs sought and obtained a writ of attachment for the M/V KONKAR RESOLUTE pursuant to Article 3541 of the Louisiana Code of Civil Procedure, and thereafter, seized the vessel to obtain quasi in rem jurisdiction.

Defendants obtained release of the vessel by posting a $1,000,000.00 bond, and responded to plaintiffs' claims by timely filing exceptions of prescription, lack

of personal jurisdiction, lack of subject matter jurisdiction, improper venue and *forum non conveniens* under the maritime law.

On May 30, 1985, after extensive briefing and oral argument, the state trial court rendered its Reasons for Judgment and Judgment granting defendants' exception of *forum non conveniens* under the general maritime law. In finding for defendants, the trial court held in pertinent part as follows:

> This Court must look to Federal Law in order to rule on the exceptions. State Courts are given concurrent jurisdiction with Federal Courts of Maritime Cases (28 U.S.C.A. 1333).
>
> The District Courts shall have original jurisdiction, exclusive of the Courts of the States, of:
>
> (I) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.
>
> This Court must apply the same law as would have been applied had this suit been brought in Federal Court. Additionally, this Court should reach the same result as would a Federal Court.
>
> Considering the facts of the instant case, this Court applies the doctrine of *forum non conveniens* which requires that this suit be dismissed.

Amalia Kassapas v. Arkon Shipping Agency, Inc., No. 293-195, slip op. at 2-3 (La. 24th J.D.C. 1985); Appendix, at 11a-12a.

In accordance with the applicable federal jurisprudence, the trial court conditionally dismissed plaintiffs' claims, setting out requirements to be followed by defendants should plaintiffs institute litigation in Greece—the appropriate forum.

Plaintiffs timely appealed the dismissal of their claims by the trial court to the Louisiana Fifth Circuit Court of Appeal. Plaintiffs argued that the doctrine of *forum non conveniens* fashioned by the federal courts for dealing with the claims of foreign seamen is strictly procedural, and thus, is not required to be applied by a Louisiana state court hearing such claims brought under the Jones Act and general maritime law. Plaintiffs asserted that Louisiana procedure should apply in that instance, and that the Louisiana Code of Civil Procedure does not recognize dismissal on the basis of *forum non conveniens*; specifically, La. Code Civ. P. art. 123 permits only transfer of cases to other district courts within the state.

On March 10, 1986, after briefing and oral argument, the Louisiana Fifth Circuit Court of Appeal vacated the dismissal by the trial court and remanded the case for further proceedings. Without addressing whether the need for uniformity in the maritime law required application of the federal maritime doctrine of *forum non conveniens*, and without considering the inevitable conflict of decision created between state and federal courts if that doctrine were not applied, the Court of Appeal held that *forum non conveniens* involves solely a procedural issue. By characterizing *forum non conveniens* as strictly procedural, the Court of Appeal then concerned itself solely with whether Louisiana procedural law recognizes dismissal on that

basis. Specifically, the Court of Appeal framed the issue and held as follows:

> The question before us is whether the district courts of our state may, absent statutory authorization, conditionally dismiss a suit on the ground of forum non conveniens. It is our opinion that they cannot, and this case is therefore remanded for further proceedings.
>
> . . . .
>
> We note initially that the device of forum non conveniens is procedural, *Missouri ex rel. Southern Ry Co. v. Mayfield*, 340 U.S. 1, 71 S.Ct. 1, 95 L.Ed 3 (1950). The question here is, therefore, whether this device forms a part of our procedural laws. . . . By acts 1970, No. 294, §1, the Legislature added what is now La. Code Civ. Pro. art. 123, to provide for forum non conveniens *transfer* from one district court to another. That article does not provide for transfer to a foreign forum, nor does it permit forum non conveniens dismissal.

Amalia Kassapas v. Arkon Shipping Agency, Inc., 485 So.2d 565, 566 (La. App. 5th Cir. 1986); Appendix, at 3a,5a-6a.

At no point was the maritime law of the United States given even a cursory discussion by the Court of Appeal.

On April 8, 1986, defendants timely applied for writ of certiorari or review to the Supreme Court of Louisiana. On May 12, 1986, that application was denied by a vote of 4 to 3, without written opinion. Appendix, at 1a.

Petitioners seek writ of certiorari to remedy the now present lack of uniformity and conflict of decision in the maritime law. This conflict has been created by the Louisiana appellate courts' refusal to recognize the doctrine of *forum non conveniens*, as fashioned and applied by this Honorable Court and other federal courts hearing maritime claims.

REASONS FOR ALLOWANCE OF THE WRIT

I. Must the general maritime law, as fashioned by Congress and the federal courts, be applied by a state court hearing a maritime claim pursuant to the "savings to suitors" clause found in 28 U.S.C. §1333? If so, can a Louisiana state court refuse to apply an essential feature of the general maritime law—the doctrine of *forum non conveniens*—and thereby destroy uniformity and create conflict between state and federal courts hearing identical maritime claims?

It has long been held that state and federal courts have concurrent jurisdiction over Jones Act and in personam maritime causes of action (28 U.S.C. §1333). However, a plaintiff's election to pursue those claims in state, as opposed to federal, court cannot be used as a vehicle for circumventing the governing federal maritime law. Although a permissible choice of forum is reserved to maritime plaintiffs in certain circumstances, the maritime law fashioned by the federal courts must control the adjudication of maritime claims in state court. *Offshore Logistics, Inc. v. Tallentire*, 54 U.S.L.W. 4745 (U.S. June 23, 1986), *rev'd*, 754 F.2d 1274 (5th Cir. 1985); *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 82 S.Ct. 780, 7 L.Ed.2d 798 (1962); *Pope and Talbot, Inc. v. Hawn*, 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed.

143 (1953); *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S.Ct. 246, 87 L.Ed. 239 (1942); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 40 S.Ct. 438, 64 L.Ed. 834 (1920); *Chelentis v. Luckenback S.S. Co.*, 247 U.S. 372, 38 S.Ct. 501, 71 L.Ed. 1171 (1918); *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917).

An integral feature of the general maritime law is the doctrine of dismissal on the basis of *forum non conveniens*. That doctrine has been applied in admiralty and maritime actions for well over a century, and was developed to allow courts to decline to exercise jurisdiction, along with otherwise proper venue, when certain "special circumstances" existed. *Perusahaan Umum Listrik Negara Pusat v. M/V TEL AVIV*, 711 F.2d 1231, 1234 (5th Cir. 1983), citing *The BELGENLAND*, 114 U.S. 355, 5 S.Ct. 860, 29 L.Ed. 152 (1885) and other authority.

As the shipping industry of the United States expanded, the "special circumstances" giving rise to an appropriate application of *forum non conveniens* became increasingly more apparent. Our courts soon became inundated with claims by foreign seamen seeking Jones Act and general maritime law remedies. In a great many of these claims—like those involved in the instant litigation—there was no connection with the United States, other than sporadic calls by a vessel or the fact that the seaman's counsel resided in the United States. Accordingly, the century old doctrine of *forum non conveniens* was called upon and refined by the federal courts to ease the growing problem presented by the influx of these claims.

When analyzing the claim of a foreign seaman brought under the Jones Act and general maritime law, the threshold determination which must be made is whether the laws of the United States should, in fact, apply. This entails application by the trial court of the detailed choice of law analysis set forth in *Lauritzen v. Larsen* , 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953) and *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970). *Azzopardi v. Ocean Drilling & Exploration Co.*, 742 F.2d 890 (5th Cir. 1984); *Fisher v. Agios Nicolaos V*, 628 F.2d 308 (5th Cir. 1980), *cert. denied, sub nom, Valmas Brothers Shipping, S.A. v. Fisher*, 454 U.S. 816, 102 S.Ct. 92, 70 L.Ed.2d 84 (1981).

Once the choice of law question is resolved, then the balancing test mandated by *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), and its progeny, is applied to determine whether the case should be dismissed in favor of a more appropriate forum.

This two-step analysis, which has been outlined and tailored by this Honorable Court and the lower federal courts, is the standard to be applied when reviewing the claims of foreign seamen seeking the benefit of our laws. It is the standard of review which is to be applied by federal courts hearing such claims, and the maintenance of uniformity in the maritime law mandates its application to similar claims brought in state court. Clearly, its application is not something which should vary from state to state, or from state to federal court within the same state.

The trial court in the instant litigation closely adhered to the guidelines established by this Honorable Court and the lower federal courts. The need for

uniformity of decision between state and federal courts hearing maritime claims was recognized by the trial court which stated that it "must apply the same law as would have been applied had this suit been brought in Federal Court. . ." and "this Court should reach the same result as would a Federal Court." *Amalia Kassapas v. Arkon Shipping Agency, Inc.*, No. 293-195, slip op. at 3 (La. 24th J.D.C. 1985); Appendix, at 11a-12a. After closely following the *Lauritzen, Rhoditis and Gilbert* analysis, the trial court dismissed plaintiffs' claims in favor of Greece—the appropriate forum.

Unfortunately, the Louisiana Fifth Circuit Court of Appeal chose to ignore the need for uniformity in maritime matters, which the Constitution and this Honorable Court have long mandated and jealously guarded. *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 40 S.Ct. 438, 64 L.Ed. 834 (1920). In fact, the opinion of the Court of Appeal does not so much as mention the issue of uniformity or how its decision might establish conflicting rules of law for state and federal courts hearing identical maritime claims. In sum, the Court of Appeal characterized the doctrine of *forum non conveniens* as being strictly procedural, and held that it is not recognized in Louisiana beyond the narrow scope of La. Code Civ. P. art. 123. That article, which virtually is identical to 28 U.S.C. §1404(a), is a change of venue statute which permits transfer of a case only to another district court within Louisiana. Turning its back on the jurisprudentially created federal doctrine, which has been refined over the years to deal with foreign seamen claims, the Court of Appeal vacated the judgment of the trial court and remanded the case for further proceedings.

Thereafter, defendants petitioned the Louisiana Supreme Court for writ of certiorari or review; however, that application was denied by 4 to 3 vote, without written opinion.

Federal maritime law, not state law, governs the course of a maritime claim filed in state court, even as to procedural matters, where the state procedure affects, redefines or limits the maritime remedy. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 79 S.Ct. 406, 3 L.Ed.2d 550 (1959); *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed. 143 (1953); *Garrett v. Moore-McCormack Co., Inc.*, 317 U.S. 239, 63 S.Ct. 246, 87 L.Ed. 238 (1942); *Powell v. Offshore Navigation, Inc.*, 644 F.2d 1063, 1065, n.5 (5th Cir.), *cert. denied*, 454 U.S. 972, 102 S.Ct. 521, 78 L.Ed.2d 391 (1981); *St. Hilaire Moye v. Henderson*, 496 F.2d 973, 980 (8th Cir.), *cert. denied*, 419 U.S. 884, 95 S.Ct. 151, 42 L.Ed.2d 125 (1974); *Gercey v. United States*, 409 F.Supp. 946, 949 (D.R.I.), *aff'ed*, 540 F.2d 536 (1st Cir. 1976), *cert. denied*, 430 U.S. 954, 97 S.Ct. 1599, 51 L.Ed.2d 804 (1977).

Clearly, the doctrine of *forum non conveniens* as it relates to foreign seamen claims is not a procedural device which should give way to state venue rules. Rather, it involves a detailed choice of law analysis which clearly affects the substantive rights of the litigants. Determining whether United States law should even apply to plaintiffs' claims is the first step mandated by this Honorable Court in the *forum non conveniens* analysis. This choice of law analysis is inextricably tied to the balancing of factors for dismissal on the basis of *forum non conveniens*. It is a two-step process which is peculiar to the analysis of

foreign seamen claims, and which has become an integral feature of the federal maritime law.

The importance of uniformity in the maritime law requires that all courts, state and federal, follow a single, consistent approach to adjudicating maritime claims. Accordingly, state statutes which work material prejudice to a characteristic feature of the maritime law, or interfere with the proper harmony and uniformity of the maritime law and its effect on international and interstate relations, must give way to the maritime law established by the federal courts. *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917).

CONCLUSION

Petitioners respectfully submit that this Honorable Court should grant review of the Louisiana appellate courts' decisions, vacate their judgments and uphold the judgment of the trial court. The decisions of the appellate courts conflict with an integral feature of the general maritime law of the United States, and they establish an impermissable conflict between state and federal courts hearing maritime claims.

A situation is created in which a foreign seaman's claim brought in federal court could be dismissed under the *Lauritzen/Rhoditis/Gilbert* analysis, but the identical claim brought in Louisiana state court could not similarly be dismissed, regardless of whether the choice of law analysis indicated that United States law was inapplicable. Clearly, this destroys the uniformity of decision in the maritime law that is mandated by the Constitution, and jealously guarded by this Honorable Court. Further, this conflict in application of the maritime law impedes the freedom of navigation between the States and with foreign coun-

tries. As the law of Louisiana presently stands, the right of a defendant vessel owner to assert the doctrine of *forum non conveniens* under the general maritime law is dictated solely by whether plaintiff chooses to sue in federal or Louisiana state court. The tact of a claimant in choosing his forum should not be allowed to displace an essential feature and right provided by the general maritime law. The doctrine of *forum non conveniens* is an important judicial response to the possible misuse by claimants in selecting forums. Without that doctrine, an open door policy "may admit those who seek not merely justice, but perhaps justice blended with some harassment." *Gilbert*, 330 U.S. at 507.

Respectfully submitted,

GERARD T. GELPI
Counsel of Record
ROBERT P. MCCLESKEY, JR.
And
GELPI, SULLIVAN, CARROLL & LABORDE
430 Notre Dame Street
New Orleans, LA 70130
Telephone: 524-9714
Attorneys for Petitioners

APPENDIX

The Supreme Court of the State of Louisiana

NO. 86-C - 0659

AMALIA KASSAPAS, INDIVIDUALLY AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGIOS KASSAPAS, AND AS TUTRIX OF THE ESTATES OF THE MINOR CHILDREN, NIKOLAS KASSAPAS AND CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSPAS; GEORGIOUS LAMBOU, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREAS LAMBOU, VASILIKI LAMBOU; SOFIA LAMBOU; AND VASILIKI LAMBOU

VS.

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A., AND KONKAR RESOLUTE CORP.

IN RE: Arkon Shipping Agency Inc.; Konkar Shipping Agencies S.A.; Konkar Resolute Corp.; Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fifth Circuit, Number 85-CA-652; Parish of Jefferson 24th Judicial District Court Div. "N" Number 293,195

May 12, 1986

Denied.

JAD

PFC

JLD

JCW

MARCUS, BLANCHE & LEMMON, J.J., would grant the writ.

Supreme Court of Louisiana
May 12, 1986
/s/ Name Illegible
Clerk of Court
For the Court

FIFTH CIRCUIT
COURT OF APPEAL
STATE OF LOUISIANA

NO. 85-CA-652

AMALIA KASSAPAS, INDIVIDUALLY AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGIOS KASSAPAS, AND AS TUTRIX OF THE ESTATES OF THE MINOR CHILDREN, NIKOLAS KASSAPAS AND CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSPAS; GOEGIOUS LAMBOU, INDIVISUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREAS LAMBOU, VASILIKI LAMBOU; SOFIA LAMBOU; AND VASILIKI LAMBOU

VERSUS

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A., AND KONKAR RESOLUTE CORPORATION

Appeal From The Twenty-Fourth Judicial District Court For The Parish Of Jefferson, No. 293-195, Division "N", Honorable James L. Cannella, Judge
EDWARD A. DUFRESNE, JR.
JUDGE

MAR 10 1986
(Court composed of Judges John C. Boutall, Thomas C. Wicker, Jr. and Edward A. Dufresne, Jr.)

LEON SARPY
1500 First N.B.C. Building
New Orleans, La. 70112

C. JOHN CASKEY, For Plaintiff-Appellant
PAUL H. DUE'
One Maritime Plaza
Government St. at Miss. River
Baton Rouge, La. 70802

ROBERT P. MCCLESKEY, JR., for Defendant-Appellee
GERARD T. GELPI
430 Notre Dame St.
New Orleans, La. 70130

JUDGMENT VACATED, MATTER REMANDED FOR FURTHER PROCEEDING.

The question before us is whether the district courts of our state may, absent statutory authorization, conditionally dismiss a suit on the ground of forum non conveniens. It is our opinion that they cannot, and this case is therefore remanded for further proceedings.

FACTS

The pertinent facts are not in dispute. Plaintiffs are the survivors of two seamen, Georgios Kassapas and Adreas Lambou, who died in an accident aboard the M/V Konkar Resolute. The deaths occurred on May 29, 1980, while the vessel was in the port of Leningrad, U.S.S.R. All parties plaintiff are residents and citizens of Greece, as were the decedents.

The M/V Konkar Resolute is a Greek flag vessel. It is the sole asset of Konkar Resolute Corporation, defendant, a Liberian corporation with its principal place of business in Monrovia, Liberia. All directors, officers and share-

holders of this corporation are citizens of Greece and residents of Greece or Saudi Arabia. None of these people are, or have ever been residents or citizens of the United States and the corporation has no office in this country. It does, however, maintain a bank account in New York.

Also made defendant is Konkar Shipping Agencies, S. A., a Panamanian corporation with its principal place of business in Greece. All directors, officers, and stockholders are Greek citizens residing in Greece or Saudi Arabia, none are, or have ever been residents or citizens of the United States and there is no corporate office in this country. It is responsible for fixing charters, routing the vessel when not chartered, and hiring and paying the ship's crew.

The third defendant is Arkon Shipping Agency, Inc., a New York corporation, with no ownership interest in the M/V Konkar Resolute. It negotiated charters for the vessel, but had no authority to conclude such charters without approval by the vessel owners. It did, however, have authority to write checks on the vessel owner's bank account in New York for routine expenses of the vessel, and to make bunkering arrangements for the vessel when it was not under charter.

At the time of the accident the vessel was under charter to a Panamanian corporation which is not a party to this suit.

COURSE OF PROCEEDINGS

A suit based on the accident and seeking relief under the Jones Act, 46 U.S.C. 688, and general maritime law, was filed in the United States District Court, Southern District of New York. In a memorandum opinion of February 8, 1984, that court dismissed the action on the ground of forum non conveniens, noting that the defendant shipowner had agreed to appear and defend the suit in Greece, and to waive any defenses based on statutes of limitations or laches. This dismissal was affirmed in an

unpublished opinion of May 23, 1984, by the United States Court of Appeals for the Second Circuit.

It appears that while the federal proceeding was pending in the court of appeals, plaintiffs learned that the vessel was within Jefferson Parish. On March 16, 1984, they commenced the present action, again urging claims based on the Jones Act and general maritime law, and noting that both the "saving to suitors" clause, 28 U.S.C. 1333(1), and the Jones Act, 28 U.S.C. 688, permit such actions in state courts. Relying on La. Code Civ. Pro. arts. 9, 3541, and 3542, they had the vessel attached. The owners posted a one million dollar bond, and the vessel was released.

The defendants filed exceptions of prescription, lack of personal jurisdiction, lack of subject matter jurisdiction, improper venue, vagueness, and forum non conveniens. They did not urge the exceptions of res judicata or lis pendens. After a hearing on the exceptions the trial court dismissed the action on the ground of forum non conveniens.[1] Because of this disposition of the case, he declared the remaining exceptions moot. Plaintiffs now appeal.

We note initially that the device of forum non conveniens is procedural, *Missouri ex rel. Southern Ry Co. v. Mayfield,* 340 U.S.1, 71 S.Ct. 1, 95 L.Ed. 3 (1950). The question here is, therefore, whether this device forms a part of our procedural laws. In *Trahan v. Phoenix Ins. Co.,* 200 So.2d 118 (La. App. 1st Cir. 1967), our brethren concluded that the common law doctrine of forum non conveniens was not provided for in our laws, and that were a court to sanction this device, it would be usurpring legislative authority. We also point out that the issue before the *Trahan* court was whether a case would be *transferred* from one state district court to another. By acts 1970, No. 294, § 1, the Legislature added what is now La. Code Civ. Pro. art. 123, to provide for forum non con-

[1] See appendix for copy of the judgment.

veniens *transfer* from one district court to another. That article does not provide for transfer to a foreign forum, nor does it permit forum non conveniens dismissal. In this court's opinion, the *Trahan* holding that the common law or federal doctrine of forum non conveniens does not exist in our laws is still viable, except to the limited extent that art. 123 authorizes transfer from one district court to another within the State of Louisiana.

We find further support for our opinion in that as far as we can determine, only in child custody matters are our courts empowered to conditionally dismiss or transfer cases to foreign jurisdictions, and these procedures are specifically authorized by La. R.S. 13:1706. Other than in such custody proceedings, we find no case, and none are cited by the parties, where a Louisiana court has conditionally dismissed a case or transferred it to a foreign forum on the ground of forum non conveniens.

We are aware of *Smith v. Glove Indemnity Co.*, 243 So.2d 882 (La. App. 1st Cir. 1971), and *Symeonides v. Cosmar Compania Naviera,* 433 So.2d 281 (La. App. 1st Cir. 1983), both of which cases indicated in dicta that forum non conveniens, transfer or dismissal beyond the narrow confines of La. Code Civ. Pro. art. 123, might be available to our courts. However, neither case was dismissed or transferred, and we do not find in those opinions a rule of law contrary to our conclusion here.

We therefore hold that the trial court erred in conditionally dismissing this case on the ground of forum non conveneins. To rule otherwise would, as noted in *Trahan v. Phoenix Ins. Co., supra,* "constitute judicial legislation of the rankest sort" (at 122).

We finally note that the remaining exceptions of the defendants have not yet been ruled on by the trial court, and we therefore remand the case for judgment on those exceptions, and all further proceedings consistent with this opinion.

JUDGMENT VACATED,
MATTER REMANDED FOR
FURTHER PROCEEDINGS.

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 293-195

DIV. "N"

AMALIA KASSAPAS, individually, and as personal representative of the Estate of GEORGIOS KASSAPAS, and as tutrix of the Estates of the minor children, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, individually, and as personal representative of the Estate of ANDREAS LAMBOU, VASILIKI LAMBOU; SOFIA LAMBOU and VASILIKI LAMBOU

VERSUS

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A. and KONKAR RESOLUTE CORP.,

FILED: May 30, 1985 Name Illegible

JUDGMENT

This matter came for a hearing on the 11th day of January, 1985, on Exceptions of Vagueness, Lack of Personal Jurisdiction, Lack of Subject Matter Jurisdiction, Im-

proper Venue, *Forum Non Conveniens* and Vagueness filed by defendants, Arkon Shipping Agency, Inc., *et als,* against plaintiffs, Amalia Kassapas, *et als.*

PRESENT: PAUL H. DUE
Attorney for plaintiffs,
Amalia Kassapas, *et als;* and

ROBERT J. MCCLESKEY, JR.
Attorney for defendants,
Arkon Shipping Agency, Inc.,
et als.

Considering the pleadings, the law, the evidence, the argument and memoranda of counsel,

IT IS ORDERED, ADJUDGED AND DECREED, that the Exception of *Forum Non Conveniens* filed by defendants, Arkon Shipping Agency, Inc., *et als,* against plaintiffs, Amalia Kassapass, *et als,* be, and the same is hereby GRANTED;

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.
/s/ Name Illegible
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that there be judgment herein in favor of defendants, Arkon Shipping Agency, Inc., *et als,* and against plaintiffs, Amalia Kassapas, *et als,* dismissing plaintiffs' Petition for Damages and for Writ of Attachment, with prejudice, and at plaintiffs' cost, provided that plaintiffs file suit in Greece against defendants within ninety (90) days of dismissal and defendants must meet the following conditions:

(1) in the Greek proceeding, defendants shall submit to service of process and jurisdiction;

(2) in the Greek proceeding, defendants shall formally waive any statute of limitations defense that has matured since the commencement of this action in the 24th Judicial District Court of the State of Louisiana;

(3) in the Greek proceeding, defendants shall formally agree to make available therein all relevant witnesses and documents within their control;

(4) in the Greek proceeding, defendants shall formally agree to satisfy any final judgment rendered by the Court; and

(5) should defendants fail to promptly meet any of these conditions, the Court shall resume jurisdiction over this case.

The other exceptions filed by defendants are, therefore, MOOT.

GRETNA, LOUISIANA, THIS 30TH DAY OF MAY, 1985.

/s/ James L. Cannella
JUDGE

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON STATE OF LOUISIANA

NO. 293-195

DIV. "N"

AMALIA KASSAPAS, individually, and as personal representative of the Estate of GEORGIOS KASSAPAS, and as tutrix of the Estates of the minor children, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS; DESPINA

KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, individually, and as personal representative of the Estate of ANDREAS LAMBOU, VASILIKI LAMBOU; SOFIA LAMBOU and VASILIKI LAMBOU

VERSUS

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A. and KONKAR RESOLUTE CORP.

FILED: May 30, 1985 /s/ Name Illegible

REASONS FOR JUDGMENT

STATEMENT OF THE CASE:

This case arises out of an accident on a Greek vessel in Leningrad, Russia, in which two seamen were killed.

FINDINGS OF FACT:

Plaintiffs allege that on May 29, 1980, Georgios Kassapas and Andreas Lambou, two Greek seamen, hereinafter referred to as "decedents", were employed by Konkar Resolute Corporation and worked on the M/V Konkar Resolute. They were docked in Leningrad, Russia. A quantity of the chemical Malathion was in the storage holds of the vessel. Noxious fumes were emitted. Some seamen were overcome by the fumes and both decedents climbed into a hold in an attempt to rescue them. Decedents collapsed and died from inhalation of the fumes.

On March 16, 1984, plaintiffs, survivors of decedents, filed a Petition for Damages and for Writ of Attachment in this Court. Shortly thereafter, the M/V Konkar Resolute was seized while within Jefferson Parish, Louisiana. Defendants claimed the vessel and posted with the Clerk of Court a $1,000,000.00 bond to effect the release of the vessel. The plaintiffs seek damages under the Jones Act (46 U.S.C. 688) and general maritime law.

The defendants filed numerous Peremptory, Declinatory and Dilatory Exceptions to the plaintiffs' petition and attachment. These exceptions relate to:

(1) prescription;

(2) lack of personal jurisdiction;

(3) lack of subject matter jurisdiction;

(4) improper venue;

(5) *forum non conveniens;* and

(6) vagueness.

Konkar Resolute Corp. is a Liberian Corporation. Its office and principal place of business is in Monrovia, Liberia. All directors, officers and shareholders are citizens of Greece and residents of Saudi, Arabia or Greece. Defendants, Konkar Resolute Corp., owned the M/V Resolute. Said vessel is the sole asset of the corporation. Between 1977 and 1985, the vessel called in Louisiana approximately five times. Defendant, Konkar Shipping Agencies, S.A., is a Panamanian Corporation. Its office and principal place of business is in Greece. All shareholders, officers and directors are citizens of Greece and residents of Saudi, Arabia or Greece. Defendant, Arkon Shipping Agencies, Inc., is a New York Corporation, with no ownership interest in Konkar Resolute. They negotiated United States Charters for the M/V Konkar Resolute, with approval from Konkar Shipping Agencies, S.A.

This Court must look to Federal Law in order to rule on the exceptions. State Courts are given concurrent jurisdiction with Federal Courts of Maritime Cases (28 U.S.C.A. 1333).

The District Courts shall have original jurisdiction, exclusive of the Courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

This Court must apply the same law as would have been applied had this suit been brought in Federal Court. Ad-

ditionally, this Court should reach the same result as would a Federal Court.

Considering the facts of the instant case, this Court applies the doctrine of *forum non conveniens* which requires that this suit be dismissed.

There are twelve factors a Court must consider in determining the *forum non conveniens* issue. The case of *Lauritzen v. Larsen,* 45 U.S. 571, 73 S.Ct. 921, 97 L. Ed. 1254 (1953) enumerated seven factors:

(1) the place of the wrongful act;

(2) the law of the flag;

(3) the allegiance of the domicile of the injured;

(4) the allegiance of the defendants' ship owner;

(5) the place of the contract;

(6) the inaccessibility of the foreign forum; and

(7) the law of the forum.

The case of *Hellenic Lines, Ltd. v. Rhoditis,* 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed 252 (1970) enumerated an eighth factor; namely, the ship owner's place of operations. Said Court further noted that the above test was neither exhaustive nor to be applied mechanically. The case of *Fisher v. Agius Nicolaos Vessel, et al,* 628 F.2d 308 (5 Cir. 1980) enumerated a ninth factor; namely, the choice of law. The case of *Gulf Oil Corporation v. Gilbert,* 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), enumerated three additional factors; namely, accessibility of proof and witnesses, the enforceability of any resulting judgment and the ease and expense of litigation in the forum.

This Court considered the *Lauritzen, Rhoditis, Fisher* and *Gulf Oil* cases and the tests resulting therefrom as controlling.

The only defendant with any United States contacts is Arkon Shipping Agencies, Inc. It had a very limited busi-

ness relationship with the other defendants. The only contacts the vessel has with the United States are intermittent calls here and its seizure in Jefferson Parish. The evidence is overwhelming that justice would best be served if this case were transferred to a Court in Greece where defendants, through counsel, have submitted to that jurisdiction.

Accordingly, the Motion to Dismiss on the grounds of *forum non conveniens* is hereby granted, with prejudice, provided that plaintiffs file suit in Greece against defendants within ninety (90) days of dismissal and defendants' meet the following conditions:

(1) in the Greek proceeding, defendants shall submit to service of process and jurisdiction;

(2) in the Greek proceeding, defendants shall formally waive any statute of limitations defense that has matured since the commencement of this action in the 24th Judicial District Court of the State of Louisiana;

(3) in the Greek proceeding, defendants shall formally agree to make available therein all relevant witnesses and documents within their control;

(4) in the Greek proceeding, defendants shall formally agree to satisfy any final judgment rendered by the Court;

(5) should defendants fail to promptly meet any of these conditions, the Court shall resume jurisdiction over this case.

Since this action is dismissed on the grounds of *Forum Non Conveniens,* it is unnecessary for this Court to address the other exceptions filed by defendants.

GRETNA, LOUISIANA, THIS 30th DAY OF MAY, 1985.

/s/ James L. Cannella
JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

82 Civ. 6954 (MP)

AMALIA KASSAPAS, individually and as personal representative of GEORGIOS KASSAPAS, deceased; NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS, minors, by their mother, AMALIA KASSAPAS; DESPINA KASSAPAS and CONSTANTINOS KASSAPAS; GEORGIOS LAMBOU, individually and as personal representative of ANDREAS LAMBOU, deceased; VASILIKI LAMBOU, SOFIA LAMBOU and VASILIKI LAMBOU,

Plaintiffs,

v.

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A., and KONKAR RESOLUTE CORP.,

Defendants

MEMORANDUM AND ORDER

APPEARANCES:

KREINDLER & KRIENDLER
Attorneys for Plaintiffs
99 Park Avenue
New York, NY 10016
By: Paul S. Edelman

HEALY & BAILLEY
Attorneys for Defendants
29 Broadway
New York, NY 10006
By: John R. Geraghty

MILTON POLLACK, Senior United States District Judge

MEMORANDUM

AMALIA KASSAPAS, et al. v. ARKON SHIPPING AGENCY, INC., et al., 82 Civ. 6954 (MP)

This is an action brought under the Jones Act, 46 U.S.C. § 688 and under the general maritime law of the United States to recover damages for the alleged wrongful death of two Greek seamen. Defendants have brought a motion seeking, *inter alia,* dismissal of this action on the ground of *forum non convenians,* pursuant to Fed.R.Civ.P 12. For the reasons to be set forth below, this Court shall grant that motion.

Plaintiffs are the personal representatives, heirs and dependents of two Greek seamen who died of apparent asphyxiation aboard the M/V KONKAR RESOLUTE on May 29, 1980. All plaintiffs herein are citizens and residents of Greece. The alleged wrongful deaths of which plaintiffs complain occured while the vessel was in Soviet waters.

Defendant Konkar Resolute Corp., the owner of the vessel, is a Liberian corporation having its principal place of business in Greece. All shareholders, officers and directors of the corporation are Greek citizens, and are residents of either Greece or Saudi Arabia. The vessel itself is of Greek registry and was chartered by a Panamanian corporation at the time the two seamen died. Charter fees were paid by charterer into a bank account maintained by the shipowner in New York.

Defendant Konkar Shipping Agencies, S.A., managed the M/V KONKAR RESOLUTE on behalf of the shipowner. Konkar Shipping Agencies was responsible for fixing charters, routing the vessel when not chartered, provisioning the vessel and hiring and paying the wages of the ship's crew. Konkar Shipping Agencies is a Greek corporation, with its principal place of business in Greece.

Its shareholders, officers and directors are Greek citizens, and are residents of either Greece or Saudi Arabia.

Defendant Arkon Shipping Agency, Inc. is a New York agent of Konkar Shipping Agencies. Arkon assisted in the negotiation of charters for the M/V KONKAR RESOLUTE in New York, and executed charters it negotiated on behalf of Konkar Shipping Agencies. All charter arrangements, however, had to be approved by Konkar Shipping Agencies. Arkon, moreover, was empowered to withdraw funds from Konkar Resolute Corporation's New York bank account to pay routine expenses for the vessel and to make bunkering arrangements for the ship when it was not under charter.

Defendant shipowner has agreed to appear and defend any wrongful death action plaintiffs might bring in Greece, and to waive any defenses based on statutes of limitations or laches if plaintiffs bring an action in Greece within thirty days of dismissal of this action.

In *Koupetoris v. Konkar Intrepid Corp.*, 402 F.Supp. 951, 953 (S.D.N.Y. 1975) (Pollack, J.), *aff'd*, 535 F.2d 1392 (2d Cir. 1976), this Court held that a New York forum was not a convenient forum for the assertion of a Jones Act/general maritime law action similar to the one now at bar. *Koupetoris* was an action brought by a Greek seamen for injuries sustained aboard a vessel anchored in an American harbor. The defendants were the shipowner (a Liberian corporation with a principal place of business in Greece) and a New York corporation, which, as the shipowner's agent, performed duties in New York of a broader scope than those performed by defendant Arkon in the instant case. (The New York agent in *Koupetoris* performed provisioning and crewing functions performed by the Greek vessel manager in the instant case.) All shareholders of the shipowner in *Koupetoris* were Greek citizens and residents; the vessel itself flew the Greek flag. Finally, the shipowner made itself amenable to suit in

Greece in the event of the dismissal of the action pending in this Court.

If anything, this Court is a less suitable forum for the maintenance of the instant case than it was for the assertion of the *Koupetoris* action. The injuries complained of herein occured, not in U.S. waters, but in the port of Leningrad. The New York agent of the shipowner in the instant case had narrower duties than those of the *Koupetoris* New York agent. In short, *Koupetoris* compels dismissal of this action.

Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 (1970), cited by the plaintiffs, is factually irrelevant to the instant situation. In *Rhoditis,* the *ship operator* had its largest office in New York and a second office in New Orleans, and the injury occured in American (not as here, in Soviet) waters.

This action is dismissed on the ground of *forum non conveniens.*

SO ORDERED.

February 8, 1984

Milton Pollack
Senior United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New-York, on the 23rd day of May one thousand nine hundred and eighty-four.

Present: HONORABLE HENRY J. FRIENDLY,
HONORABLE THOMAS J. MESKILL,
HONORABLE AMALYA L. KEARSE,
Circuit Judges.

Docket No. 84-7196

AMALIA KASSAPAS, individually and as personal representative of GEORGIOS KASSAPAS, deceased, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS, minors, by their MOTHER, AMALIA KASSAPAS, DESPINA KASSAPAS and CONSTANTINOS KASSAPAS, GEORGIOUS LAMBOU, individually and as personal representative of ANDREAS LAMBOU, deceased, VASILIKI LAMBOU, SOFIA LAMBOU, and VASILIKI LAMBOU,

Plaintiffs-Appellants,

v.

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A., and KONKAR RESOLUTE CORP.,

Defendants-Appellees.

Appeal from a judgment of the United States District Court for the Southern District of New York, Pollack, *J.*

This matter came on to be heard on the transcript of record from said district court and was argued by counsel.

Defendants' contacts with the United States are far too insubstantial to make one of them an "employer" subject

to the provisions of the Jones Act. *See Koupetoris* v. *Konkar Intrepid Corp.*, 535 F.2d 1392, 1396 (2d Cir. 1976). Furthermore, the district court did not abuse its broad discretion in determining that the United States would be an inappropriate forum for this action.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of the district court is affirmed substantially for the reasons spelled out in Judge Pollack's memorandum of decision below.

/s/ Henry J. Friendly
Henry J. Friendly, U.S.C.J.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

/s/ Thomas J. Neskill
Thomas J. Neskill, U.S.C.J.

/s/ Amalya L. Kearse
Amalya L. Kearse, U.S.C.J.